UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WEATHERFORD INTERNATIONAL SECURITIES LITIGATION	11 Civ. 1646 (LAK) (JCF) CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Court-appointed Lead Counsel Kessler Topaz Meltzer & Check, LLP ("Lead Counsel") respectfully submits this memorandum in support of its motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys' fees and reimbursement of litigation expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel[1] in connection with prosecuting and resolving the above-captioned action ("Action"). Lead Counsel's request for expenses includes a request for reimbursement pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for costs and expenses incurred by the proposed Settlement Class Representatives, American Federation of Musicians and Employers' Pension Fund ("AFME") and Georgia Firefighters' Pension Fund ("GFPF"), in connection with their representation of the Settlement Class.[2]

I. PRELIMINARY STATEMENT

The settlement of this Action for $52,500,000 represents a substantial recovery for the Settlement Class. This recovery was achieved through the skill, tenacity and effective advocacy of Plaintiffs' Counsel, who vigorously litigated this Action for nearly three years against highly skilled defense counsel. For the efforts undertaken on behalf of the Settlement Class, Lead Counsel, on behalf of Plaintiffs' Counsel, respectfully requests an award of attorneys' fees in the amount of $12.6 million—an amount which approximates Plaintiffs' Counsel's total aggregate

[1] The term "Plaintiffs' Counsel" refers collectively and solely to Lead Counsel and court-appointed local counsel, the Law Offices of Curtis V. Trinko, LLP.

[2] Lead Counsel is simultaneously submitting the Declaration of Eli R. Greenstein in Support of (A) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Greenstein Declaration" or "Greenstein Decl."). The Court is respectfully referred to the Greenstein Declaration for a detailed description of, *inter alia*, the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the value of the Settlement to the Settlement Class, as compared to the risks and uncertainties of continued litigation; and a description of the extensive efforts undertaken by Lead Counsel on behalf of the Settlement Class. Unless otherwise noted, capitalized terms have the meanings set out in the Greenstein Declaration and in the Stipulation of Settlement and Release dated as of January 28, 2014 (ECF No. 240-1) (the "Stipulation"), all emphasis is added and internal citations and footnotes are omitted.

lodestar of $12,912,708.50 and corresponds with the amount permitted under Lead Counsel's retainer agreement with AFME, a sophisticated institutional Lead Plaintiff, negotiated at the outset of this Action.[3] As set forth below, Lead Counsel's fee request is fully supported by the factors set forth in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 51 (2d Cir. 2000), and under the lodestar approach permitted by the Second Circuit. *See McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). Lead Counsel also requests reimbursement of Plaintiffs' Counsel's litigation expenses in the amount of $1,381,724.59 as well as reimbursement to the proposed Settlement Class Representatives for their costs and expenses incurred in connection with their representation of the Settlement Class in the aggregate amount of $19,935.69.

The Settlement of this Action was achieved only after the substantial completion of fact discovery (scheduled to end on January 24, 2014) and just prior to the parties' exchange of expert reports on February 24, 2014. In reaching this point in the litigation, Lead Counsel undertook extensive efforts and devoted substantial resources on a wholly contingent basis to investigating, prosecuting and resolving Plaintiffs' claims. These efforts included, among other things: (i) thoroughly reviewing and analyzing publicly available information regarding Weatherford; (ii) conducting detailed investigative interviews of non-party witnesses, including numerous former Weatherford employees and contractors; (iii) developing a robust factual record and filing a consolidated complaint and two proposed amended complaints for violations of the federal securities laws; (iv) conducting extensive research of the applicable law for claims asserted in this Action and the potential defenses thereto; (v) opposing two motions to dismiss; (vi) consulting with, and obtaining reports and analyses from, multiple experts; (vii) researching and filing extensive class certification briefing and expert market efficiency analysis to certify a class of allegedly damaged investors; (viii) responding to substantial discovery propounded by Defendants and defending the depositions of both Settlement Class Representatives and Plaintiffs' expert on market efficiency; (ix) conducting extensive discovery, including issuing comprehensive party and non-party discovery requests and reviewing and analyzing approximately 2.3 million pages of documents produced by Defendants and various non-party witnesses such as E&Y, PwC, Deloitte, a law firm, former employees, and securities analysts; (xi) researching, preparing and briefing seven separate motions to compel discovery, all of which were granted in part; and (xii) conducting, defending or preparing to take the depositions of 24 witnesses, including some of the most senior officers of the Company and multiple audit firms. *See* Greenstein Decl. at ¶¶21-76.

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[3] *See* Declaration of Maureen B. Kilkelly, Executive Director of American Federation of Musicians and Employers' Pension Fund in Support of (A) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Plaintiffs' Request for Reimbursement of Costs and Expenses (the "Kilkelly Decl.") at ¶8, attached as Exhibit 3 to the Greenstein Declaration.

The Settlement is a particularly favorable result when considered in light of the substantial risks and challenges confronted in the Action. Notably, when the Settlement was reached, there were several critical motions pending before this Court—*e.g.*, Plaintiffs' Class Certification Motion and Motion to Amend the Complaint. Greenstein Decl. at ¶11. In addition, there was (and still is) tremendous uncertainty regarding the Supreme Court's ongoing review of the fraud-on-the-market presumption of reliance recognized in *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S. Ct. 978 (1988). *Id.* at ¶11, 36-38, 96; *see Halliburton Co. v. Erica P. John Fund, Inc.*, No. 13-317, 134 S. Ct. 636 (Mem) (Nov. 15, 2013) ("*Halliburton II*"). The Settlement avoids both the uncertainty of *Halliburton II* and the possibility of an adverse ruling on

Plaintiffs' Class Certification Motion and/or Motion to Amend the Complaint by this Court—either of which could limit or negatively impact any future recovery for the Settlement Class.

In addition to the foregoing risks, Plaintiffs faced substantial hurdles to successfully establishing Defendants' liability, loss causation and the Settlement Class's damages. Greenstein Decl. at ¶¶88-93. With respect to loss causation, because Plaintiffs' claims were limited to those arising from the Internal Controls Misstatements, there was significant risk that Plaintiffs would be unable to disaggregate the portion of the losses attributable to the Internal Controls Misstatements from the losses attributable to other "confounding information," *i.e.*, disclosures related to the Tax Accounting Misstatements, the restatement of financial results, future earnings guidance and/or oil prices in the Middle East. *See id*. at ¶88 and § II.B.3 herein.

With respect to Defendants' scienter, Plaintiffs had to overcome the considerable risk that the Court or a jury could find that Weatherford's tax accounting errors and internal control problems were the result of negligence or mismanagement at a Company that simply grew too quickly and became too complex. Plaintiffs also faced the risk of proving that the single remaining Individual Defendant who made actionable statements in the case, CFO Becnel, was sufficiently aware of tax accounting errors or material weaknesses in internal controls at the time he filed certifications under Sarbanes-Oxley. *Id*. at ¶94. Finally, to the extent Plaintiffs could prove that lower-level tax personnel were reckless in disregarding accounting errors or internal control deficiencies, there was still a risk that Plaintiffs could not establish liability either because those employees made no statements or were not senior enough to impute scienter to the Company. *Id*. at ¶95. In light of these risks, Lead Counsel respectfully submits that the Settlement is a testament to Plaintiffs' Counsel's hard work and the quality of their representation.

Pursuant to the Court's Order Concerning Proposed Settlement dated April 1, 2014 (ECF No. 249) (the "Notice Order"), more than 660,000 copies of the Notice have been mailed to potential Settlement Class Members and nominees, and the Summary Notice was published once in the national edition of *The Wall Street Journal* and *Investor's Business Daily*, placed on the settlement website at www.WeatherfordSecuritiesLitigationSettlement.com and transmitted over *PR Newswire*. *See* Affidavit of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of Summary Notice; and (C) Requests for Exclusion Received to Date, attached as Exhibit 1 to the Greenstein Declaration ("Fraga Aff."), at ¶¶2-11, 13. The Notice advises potential Settlement Class Members that Lead Counsel would be seeking attorneys' fees in an amount not to exceed $12.6 million and reimbursement of Litigation Expenses in an amount not to exceed $1.5 million, which amount includes an estimate of reimbursement to Plaintiffs in an amount not to exceed $25,000 in the aggregate. *See* Fraga Aff. Exhibit A at 1. While the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, only one objection to the amount of attorneys' fees and expenses set forth in the Notice has been received from an individual investor. *See* Greenstein Decl. at ¶¶101 & n.4, 130.[4]

As detailed more fully below, Lead Counsel respectfully requests that the Court approve its application for an award of attorneys' fees and reimbursement of litigation expenses,

[4] A copy of the objection submitted by Stephen Shoeman is attached as Exhibit 2 to the Greenstein Declaration. Mr. Shoeman generally objects to the amount of attorneys' fees and expenses set forth in the Notice. Lead Counsel will post this memorandum, along with the other documents in support of the Settlement and fee request, including the Greenstein Declaration which details the extensive time and effort expended by Lead Counsel during the pendency of this Action, on the website www.WeatherfordSecuritiesLitigationSettlement.com for review by Settlement Class Members. The deadline for the submission of objections is June 13, 2014. Lead Counsel will address any additional objections received after this submission, along with Mr. Shoeman's objection, in Plaintiffs' reply brief to be filed with the Court on June 20, 2014.

including reimbursement to Plaintiffs for reasonable costs and expenses incurred in connection with their representation of the Settlement Class.

II. THE FEE REQUESTED IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A. Plaintiffs' Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980); *US Airways, Inc. v. McCutchen*, 133 S. Ct. 1537, 1550 (2013); *see also Goldberger*, 209 F.3d at 47. The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47.

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund should "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future alleged misconduct of a similar nature."[5] Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC and

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[5] *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (an award of appropriate attorneys' fees should "provid[e] lawyers with sufficient incentive to bring common fund cases that serve the public interest" and "attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so").

DOJ.[6] Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 142 (S.D.N.Y. 2008).

B. The *Goldberger* Factors Strongly Support the Requested Fee

The Second Circuit has set forth the following criteria that courts should consider when analyzing the reasonableness of a request for attorneys' fees in a common fund case: (1) the magnitude and complexities of the action; (2) the litigation risks involved; (3) the quality of class counsel's representation; (4) the size of the requested fee in relation to the recoveries obtained; (5) the time and labor expended by class counsel; and (6) public policy considerations. G*oldberger*, 209 F.3d at 50. Each of these factors weighs in favor of Lead Counsel's present fee request.

1. The Time and Labor Expended by Plaintiffs' Counsel Support the Requested Fee

a. Plaintiffs' Efforts on Behalf of the Settlement Class

Over the course of nearly three years, Lead Counsel marshaled considerable resources and time in the research, investigation, prosecution and ultimate resolution of the Action. Indeed, it was not until after Lead Counsel developed a comprehensive record through substantial fact discovery, and moved to amend the operative complaint to incorporate the fruits of this discovery, that the parties were able to reach agreement to settle the Action. As discussed in the

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6 *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1201 (U.S. 2013); *accord Bateman Eichler*, *Hill Richards*, *Inc. v. Berner*, 472 U.S. 299, 310, 105 S. Ct. 2622, 2628 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplemental to [SEC] action.'" (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432, 84 S. Ct. 1555, 1560 (1964))).

Greenstein Declaration, as part of its substantial efforts in the Action, Lead Counsel, among other things:

- conducted an extensive investigation into the facts underlying the Action, including the review of thousands of pages of publicly-available documents regarding Weatherford, interviews with nearly 20 non-party witnesses which included Weatherford employees and contractors, and consultation with forensic accounting experts, and drafted a detailed consolidated complaint based on this investigation (Greenstein Decl. at ¶¶21-23);

- opposed motions to dismiss the Complaint filed by Defendants and Ernst & Young, LLP ("E&Y") ("Motions to Dismiss") and opposed E&Y's subsequent motion for the entry of a final judgment pursuant to Rule 54(b) (*id*. at ¶¶24-31);

- reviewed and challenged Defendants' first answer to the Complaint resulting in Defendants' filing of a second and third answer to the Complaint (*id*. at ¶33);

- consulted with multiple experts and consultants in several fields, including tax accounting, intercompany divided eliminations, internal controls pursuant to Sarbanes-Oxley, forensic accounting, economics, and damages (*id*. at ¶¶73-76);

- researched and filed extensive class certification briefing and expert market efficiency analysis to certify a class of allegedly damaged investors (*id*. at ¶¶35-38);

- responded to substantial discovery propounded by Defendants in connection with Plaintiffs' motion for class certification, including preparing for and defending depositions of the proposed Settlement Class Representatives, as well as Plaintiffs' expert on market efficiency (*id*. at ¶¶48-51);

- pursued multiple avenues of discovery from Defendants, including several sets of document requests, interrogatories and numerous requests for admissions (*id*. at ¶41), and issued subpoenas to 25 third parties, including Weatherford's auditors, financial advisors, consultants, the law firm representing Weatherford's Audit Committee and numerous financial analysts (*id*. at ¶¶45-47);

- engaged in extensive document discovery which included the review and analysis of approximately 2.3 million pages of documents produced by Defendants and third parties as well as the development and implementation of a thorough document review protocol for the effective and efficient review of such documents (*id*. at ¶¶42-44);

- researched, prepared and briefed seven separate affirmative motions to compel discovery and extensively briefed legal issues pertaining to Defendants' discovery motions and confidentiality designations (*id*. at ¶¶52-60);

- drafted substantial correspondence and conferred with Defendants on numerous discovery disputes (*id*. at ¶¶61-62);
- conducted, defended and/or prepared to take the depositions of 24 witnesses, including some of the most senior officers of the Company, as well as a Rule 30(b)(6) deposition of E&Y related to various topics such as the scope of its engagement with Weatherford and Weatherford's SOX process (*id*. at ¶¶37, 63-67); and
- researched and filed extensive briefing seeking to amend or supplement the Complaint to incorporate important factual developments and evidence obtained in discovery (*id*. at ¶¶68-72), and submitted multiple proposed amended complaints.

Substantial time and effort was also required to negotiate the Settlement. The first attempt to resolve the Action took place in June 2011 when the case was referred, for purposes of discussing settlement, to Magistrate Judge Francis. Two years later, in June 2013, the parties participated in formal mediation under the auspices of the Hon. Daniel H. Weinstein (Ret.), a former judge and an experienced and highly respected mediator. In conjunction with the mediation, the parties submitted detailed mediation statements and during the mediation the parties made robust presentations regarding the merits of the Action. Although too far apart in their respective positions at the time the formal mediation concluded, the parties continued their settlement negotiations as the case neared the discovery cutoff. With the assistance of Judge Weinstein, the parties reached their agreement-in-principle to settle the Action in January 2014. Greenstein Decl. at ¶80.

b. Lead Counsel's Fee Request is Reasonable Under a Lodestar Analysis

Among other methods, the Second Circuit has authorized district courts to perform a lodestar analysis in awarding attorneys' fees in common fund cases. *See*, *e.g*., *Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours each particular attorney or paraprofessional expended on the litigation by the timekeeper's current hourly rate, and then totaling the amounts to arrive at a lodestar for all timekeepers.[7] In cases of this nature, fees representing multipliers above the lodestar are typically and properly awarded to reflect the contingency fee risk and other relevant factors. *See*, *e.g.*, *In re FLAG Telecom Holdings*, *Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors."); *In re Comverse Tech.*, *Inc. Sec. Litig.*, No. 06-cv-1825, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar."); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007) ("the Court rewards [] lead counsel that takes on more risk, demonstrates superior quality, or achieves a greater settlement with a larger lodestar multiplier").[8]

Here, Plaintiffs' Counsel expended 30,325.46 hours performing work for the benefit of the Settlement Class, for an aggregate lodestar of $12,912,708.50. *See* Greenstein Decl. at ¶113, Exs. 5 and 6. Thus, Lead Counsel's fee request, if approved, would yield a slightly negative

[7] Both the Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9; *Missouri v. Jenkins*, 491 U.S. 274, 284, 109 S. Ct. 2463, 2469 (1989).

[8] *See also In re Lehman Brothers Sec. Litig.*, No. 08 Civ. 05523 (LAK) (GWG), slip op. at 3 (S.D.N.Y. June 29, 2012) ECF No. 431 (awarding a multiplier of 1.5 in connection with the fee request for the director and officer settlement and underwriter settlements); *In re Lehman Brothers Sec. Litig.*, No. 08 Civ. 05523 (LAK) (GWG), slip op. at 2 (S.D.N.Y. Apr. 1, 2014) ECF No. 563 (awarding a multiplier of 1.25 in connection with the fee request for the structured note settlement).

multiplier of 0.98 on the total lodestar. *Id.*[9] As such, this multiplier "affords additional evidence that the requested fee is reasonable." *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014). Indeed, the negative lodestar multiplier here falls well below the range of multipliers awarded in other complex cases, including other securities class actions. *See, e.g.*, *Wal-Mart Stores, Inc. v. VISA U.S.A. Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (upholding multiplier of 3.5 as reasonable on appeal). *See also Cornwell v. Credit Suisse Grp.*, No. 08 Civ. 03758 (VM), Order Awarding Attorneys' Fees And Expenses (EFC No. 117) at 4 (S.D.N.Y. July 20, 2011) (awarding fee representing a multiplier of 4.7); *Comverse*, 2010 WL 2653354, at *5 (awarding fee representing a 2.78 multiplier); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding fee representing 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding 3.97 multiplier, and finding fee awards of 3 to 4.5 to be "common").

Lead Counsel respectfully submits that the amount, substance and quality of work performed weighs strongly in favor of the requested fee.

2. The Magnitude and Complexity of the Action Support the Requested Fee

Courts have long recognized that securities class action litigation is "notably difficult and notoriously uncertain." *Aeropostale*, 2014 WL 1883494, at *5. Here, the claims against Defendants were unquestionably complex—involving technical tax accounting issues and financial restatements over the course of four fiscal years, difficult issues regarding varying degrees of "deficiencies" in internal controls, the uncertain interplay between GAAP and tax

[9] In addition, no hours were incurred on confirmatory discovery following the resolution of the Action and no time relating to the fee request is included in the lodestar. Greenstein Decl. at ¶¶117-118.

reporting, and a labyrinthine corporate tax structure underlying all of the accounting and internal control issues in the case. As discussed below, Plaintiffs confronted numerous complexities and risks in pursuing the claims in this Action. *See also*, Greenstein Decl. at ¶¶88-96.

3. The Risks of the Litigation Support the Requested Fee

The Second Circuit has identified "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable award of attorneys' fees]." *Goldberger*, 209 F.3d at 54; *see also Telik*, 576 F. Supp. 2d at 592 ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions."); *McDaniel*, 595 F.3d at 424 ("[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of a multiplier") (quoting *Goldberger*, 209 F.3d at 54). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-cv-11814(MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004).

From the outset of the Action, Lead Counsel recognized the considerable risks it would face by pursuing claims against Defendants.[10] These risks were heightened by the Court's ruling on Defendants' Motions to Dismiss—dismissing claims against E&Y entirely and narrowing Plaintiffs' remaining claims to those arising from Defendants' Internal Controls Misstatements. In addition to the substantial risks in proving loss causation, scienter and damages (*see infra*; Greenstein Decl. at ¶¶88-95), yet another significant risk to recovery is the Supreme Court's forthcoming decision in *Halliburton II* regarding the applicability, scope and contours of fraud-on-the-market presumption recognized in *Basic*. Greenstein Decl. at ¶¶11, 36-38, 96. Although Lead Counsel worked diligently and succeeded in developing a compelling factual record through vigorous discovery and motion practice, Lead Counsel recognized that there were significant uncertainties and risks with respect to liability, loss causation and damages at multiple future stages of the litigation.

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[10] *See, e.g., In re Alstom S.A. Sec. Litig.*, Master File No. 03-CV-6595 (VM) (after years of litigation and millions of dollars in litigation expenses, class membership severely reduced based on the Supreme Court's decision in *Morrison v. National Bank of Australia*, 130 S. Ct. 2869 (2010)); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07–61542–CIV, 2011 WL 1585605, at *24 (S.D. Fla. Apr. 25, 2011) (favorable jury verdict procured after a six week trial vacated by the court on a motion for judgment as a matter of law).

For example, regardless of whether Plaintiffs could ultimately establish liability for the remaining Internal Controls Misstatements, Plaintiffs faced significant challenges in establishing loss causation and damages for their remaining claims. Defendants were certain to challenge Plaintiffs' ability to disaggregate damages—*i.e.*, to separate and apportion the losses attributable to the Internal Controls Misstatements from the losses attributable to the Tax Accounting Misstatements, financial restatement claims and macroeconomic factors relating to oil prices. *Id.* at ¶88. Further, even if Plaintiffs could prove that the Internal Controls Misstatements were a factor in causing losses, they still faced a significant risk that the Court and/or a jury would find that only a small fraction of the alleged total damages was attributable to Defendants' Internal Controls Misstatements. *Id.* at ¶90. Plaintiffs would also have to overcome Defendants' anticipated proportional fault defense. *Id.* at ¶92.

Lead Counsel was also aware of the challenges and defenses Plaintiffs would face in attempting to establish Defendants' liability, particularly in attempting to show that the one remaining Individual Defendant, Becnel, acted intentionally or recklessly as opposed to negligently or innocently. *Id.* at ¶94. Defendants would have argued, among other things, that Becnel relied heavily on numerous tax executives, accountants, consultants, external auditors and Internal Audit personnel in certifying the Company's financial results and reaching the conclusion that no material weakness existed in Weatherford's internal controls. *Id.* at ¶95. Moreover, even if Plaintiffs could prove that lower-level or mid-level employees in Weatherford's Tax or Internal Audit Department were reckless as to the underlying accounting errors and internal control deficiencies, there was no guarantee that Plaintiffs could impute those employees' scienter to Weatherford or Becnel, especially given that Weatherford's Tax and Internal Audit employees neither made statements nor signed any SEC filing. *Id.*

4. The Quality of Plaintiffs' Counsel's Representation Supports the Requested Fee

The skill and quality of legal counsel also supports the requested fee. Lead Counsel is among the nation's preeminent law firms in class action securities litigation and has successfully litigated these actions on behalf of large institutional investors in courts throughout the country.[11] Lead Counsel respectfully submits that its experience in complex securities class action litigation, along with its vigorous prosecution of the Action on behalf of the Settlement Class, provided the necessary leverage to negotiate the outstanding recovery obtained for the Settlement Class. *See Shapiro v. JPMorgan Chase & Co., et al.*, Nos. 11 Civ. 8331 (CM) (MHD), 11 Civ. 7961 (CM), 2014 WL 1224666, at *22 (S.D.N.Y. Mar. 24 2014) (the skill and prior experience of counsel in the field is relevant to determining fair compensation). Local Counsel also has substantial expertise in prosecuting complex litigation.[12]

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[11] *See* Declaration of David Kessler in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses in Connection with the Weatherford Settlement, Filed on Behalf of Kessler Topaz Meltzer & Check, LLP (the "Kessler Decl.") attached as Exhibit 5 to the Greenstein Declaration. *See also, e.g., In re Southern Peru Copper Corp. Derivative Litigation, Consol.* CA No. 961-CS (Del. Ch.); *In re: Lehman Brothers Securities and ERISA Litigation*, Master File No. 09 MD 2017–LAK (S.D.N.Y.); *In re Bank of America Corp. Securities, Derivative, and ERISA Litig.*, Master File No. 09 MD 2058-PKC (S.D.N.Y.).

[12] *See* Declaration of Curtis V. Trinko in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of the Law Offices of Curtis V. Trinko, LLP (the "Trinko Decl.") attached as Exhibit 6 to the Greenstein Declaration.

The quality of opposing counsel is also important in evaluating the quality of the services rendered. *See*, *e.g.*, *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement"); *In re Adelphia Commc'ns Corp. Sec. and Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."). In this Action, Defendants are represented by a highly experienced defense firm, Latham and Watkins, LLP, which is known for obtaining high-profile loss causation decisions in this Circuit (*see In re Omnicom Group, Inc. Sec. Litig.*, 597 F.3d 501 (2d Cir. 2010)) and has vigorously defended its clients and spared no effort or expense in such defense. Greenstein Decl. at ¶121. In the face of this formidable opposition, Lead Counsel developed Plaintiffs' case so as to persuade Defendants to agree to a favorable financial recovery for the Settlement Class.

5. The Fee Request Is Fair and Reasonable in Relation to the Settlement Amount

"When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3 (quoting *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 814, 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23, 2009). Here, Lead Counsel seeks to recover a fee that approximates the reasonable value of Plaintiffs' Counsel's services measured by their hourly rates and the number of hours devoted to the task. The resulting multiplier represented by the fee request here falls well within the "range of reasonableness" based on fees awarded by this and other Courts across the nation, in this and other large securities cases.

Lead Counsel's request for attorneys' fees represents 24% of the Settlement Fund, reflecting the fee agreement negotiated by Lead Plaintiff. The requested fee is reasonable in light of the circumstances of this case, including the substantial recovery obtained for the Settlement Class in the face of significant risks, and is further supported by the fact that it approximates Plaintiffs' Counsel's lodestar.

6. Public Policy Considerations Support the Requested Fee

Courts in the Second Circuit have held that "[p]ublic policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *Aeropostale*, 2014 WL 1883494, at *17. Public policy supports granting attorneys' fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts (if any) of the SEC and other governmental agencies and help deter future wrongdoing. *See Maley v. Del. Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *JPMorgan Chase*, 2014 WL 1224666, at *23 (recognizing "the importance of private enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis").

Lead Counsel's willingness to assume the risks of this litigation resulted in a substantial benefit to the Settlement Class. To Lead Counsel's knowledge, the Settlement represents the *only* recovery for the Settlement Class arising from the claims alleged in the Action. Indeed, despite the fact that the SEC and DOJ have been investigating Defendants' alleged conduct since 2011, neither agency has brought charges or claims of any kind—let alone fraud allegations—

against Defendants based on the facts underlying this Action. Greenstein Decl. at ¶8. Thus, public policy favors granting Lead Counsel's request for attorneys' fees and expenses here.

C. Plaintiffs Have Approved the Requested Fee

Lead Counsel is submitting its fee request with the prior approval of Lead Plaintiff—a sophisticated institutional investor—and this application is, in all respects, in accordance with the retainer agreement entered into by Lead Plaintiff and Lead Counsel at the outset of the Action. *See* Kilkelly Decl. at ¶8.[13] Under the retainer agreement, Lead Counsel agreed to undertake the litigation on an entirely contingent basis, meaning that Lead Counsel would not be compensated at all, or reimbursed for any expenses incurred on behalf of the Settlement Class, unless it obtained a recovery for the Settlement Class. Generally, the retainer agreement provided that attorneys' fees would be based on a "fee grid" in which attorneys' fees would be adjusted based upon the amount recovered, with the permissible fee percentage decreasing with the size of the settlement amount. *Id.*

The fact that the requested attorneys' fees are based upon a retainer agreement negotiated with Lead Plaintiff at the outset of the Action supports the reasonableness of the requested fee. The PSLRA was intended to encourage sophisticated institutional investors like Plaintiffs to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at *27 (1995), reprinted in 1995

[13] Proposed Settlement Class Representative GFPF also approves Lead Counsel's fee request. *See* Declaration of James R. Meynard, Former Executive Director of Georgia Firefighters' Pension Fund in Support of (A) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Plaintiffs' Request for Reimbursement of Costs and Expenses (the "Meynard Decl.") at ¶¶8-9, attached as Exhibit 4 to the Greenstein Declaration.

U.S.C.C.A.N. 730, 731. Congress believed these institutions would be in the best position to monitor the ongoing prosecution of the litigation and assess the reasonableness of counsel's fee request. As set forth in their respective declarations (*see* Greenstein Decl. Exs. 3 and 4), each of the Plaintiffs was actively involved in the prosecution and resolution of the Action and has a firm basis for assessing the reasonableness of the fee request before approving it.

While a district court is not required to adhere to such a retainer agreement, *see Visa*, 396 F.3d at 123-24, Courts have found that such agreements should be given deference. "[W]hen class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight." *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012); *see also In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 466 (S.D.N.Y. 2004) ("in class action cases under the PSLRA, courts presume fee requests submitted pursuant to a retainer agreement negotiated at arm's length between lead plaintiff and lead counsel are reasonable").

Here, Plaintiffs' approval of the present fee request lends additional support to Lead Counsel's request and should be considered in the Court's determination of a reasonable fee in this case.

D. The Reaction of the Settlement Class to Date Supports the Requested Fee

The Settlement Class's reaction to the proposed settlement to date reinforces the reasonableness of the requested fee. As of May 21, 2014, the Court-appointed claims administrator has mailed over 660,000 copies of the Notice Packet to potential members of the Settlement Class or nominees, informing them of, *inter alia*, Lead Counsel's intention to apply to the Court for an award of attorneys' fees not to exceed $12.6 million, an amount that approximates Plaintiffs' Counsel's total lodestar for their services on behalf of the Settlement Class. *See* Fraga Aff. at ¶10. While the time to object to Lead Counsel's fee request does not expire until June 13, 2014, to date, only one objection to the amount of attorneys' fees set forth in the Notice—submitted by Stephen Shoeman—has been received. Lead Counsel will address Mr. Shoeman's objection, along with any additional objections received after this submission, in its reply brief to be filed with the Court on June 20, 2014.

III. THE LITIGATION EXPENSES INCURRED ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE SETTLEMENT

Lead Counsel requests reimbursement of litigation expenses that were reasonably incurred by Plaintiffs' Counsel and necessary to the prosecution and resolution of the Action. These expenses are properly recovered by counsel. *See In re Am. Int'l Group, Inc. Sec. Litig.*, 293 F.R.D. 459, 467 (S.D.N.Y. 2013) (in a class action, attorneys may be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'"); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."). Plaintiffs' Counsel incurred a total of $1,381,724.59 in litigation expenses on behalf of the Settlement Class. Greenstein Decl. at ¶¶124, 132; *see also* declarations submitted on behalf of Plaintiffs' Counsel attached to the Greenstein Declaration as Exhibits 5 and 6. Reimbursement of these expenses is fair and reasonable.

Of the total expenses, a significant amount—$786,394.45, or approximately 57%—was incurred for experts and consultants. Greenstein Decl. at ¶135; *see also* Kessler Decl., Ex. 2. Specifically, Lead Counsel retained multiple experts and consultants in several disciplines whose work was critical to the development of the case. Greenstein Decl. at ¶¶73-76. During the course of the litigation, these experts and consultants assisted Plaintiffs in, *inter alia*: preparing the Complaint and the PAC; analyzing extensive discovery; preparing for depositions and an anticipated motion for summary judgment; forensically deciphering the complex tax transactions at issue in this case; preparing a market efficiency report in support of class certification; analyzing estimated damages in connection with the mediation and further settlement negotiations; and preparing the proposed Plan of Allocation. *Id.*

Another large component of the expenses—$204,868.97, or approximately 15%—was for an outside vendor to provide the necessary services for electronic database hosting and document review that enabled Lead Counsel to efficiently and effectively search, review and perform analytics on the approximately 2.3 million pages of documents received by Plaintiffs, as well as detect any technical or substantive deficiencies or gaps in Defendants' productions, custodian lists or search term proposals. Greenstein Decl. at ¶136; *see also* Kessler Decl., Ex. 2. In addition, $60,573.59, or approximately 4% of Plaintiffs' Counsel's expenses reflect fees assessed by the mediator in this matter, Judge Weinstein. Greenstein Decl. at ¶138.

The expenses detailed above as well as the other expenses for which Plaintiffs' Counsel seek reimbursement (*i.e.*, online legal and factual research, court fees, travel expenses, court reporting services, reproduction costs (printing, copying and scanning), facsimile charges, and postage and delivery expenses) are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour.[14] These expense items are billed separately, and such charges are not duplicated in the firm's hourly billing rates.

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[14] *See Aeropostale*, 2014 WL 1883494, at *19 ("The [] expenses [] attributable to such things as travel for depositions and for mediation, the costs of computerized research, duplicating documents, and other incidental expenses…were critical to Lead Plaintiff's success in achieving the proposed Settlement."); *Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market'

The Notice advised potential Settlement Class Members that Lead Counsel would be seeking reimbursement of Litigation Expenses, including reimbursement of Plaintiffs' costs and expenses in connection with their representation of the Settlement Class, in an amount not to exceed $1.5 million. As discussed above, one objection to the maximum expense figure set forth in the Notice has been received and will be addressed in Plaintiffs' reply on June 20, 2014. In sum, Lead Counsel respectfully submits that the expenses sought here ($1,381,724.59) were all reasonably and necessarily incurred by Plaintiffs' Counsel, are of the type customarily reimbursed in securities cases, and should thus be approved.

IV. AFME AND GFPF SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. § 78U-4(A)(4)

In connection with its request for reimbursement of litigation expenses, Lead Counsel also seeks reimbursement of $19,935.69 for the costs and expenses incurred by the Settlement Class Representatives directly related to their representation of the Settlement Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be granted to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). As required and envisioned by the PSLRA, Plaintiffs' claims for reimbursement of expenses are based upon the substantial amount of time devoted to the Action by employees of Plaintiffs. *See* Declaration of Maureen B. Kilkelly (on behalf of AFME) and James R. Meynard (on behalf of GFPF) attached as Exhibits 3 and 4 to the Greenstein Declaration.[15]

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reimburses attorneys [and] [f]or this reason, they are properly chargeable to the Settlement fund.").

[15] The hourly rates for which reimbursement is sought are based on the annual salaries of the respective Plaintiff personnel who worked on this Action. *See* Kilkelly Decl. at ¶13; Meynard Decl. at ¶13.

As set forth in the declarations of representatives for AFME and GFPF, Plaintiffs have been committed to pursuing the Settlement Class's claims against the Defendants. These large institutions have actively and effectively fulfilled their obligations as representatives of the Settlement Class, complying with all of the many demands placed upon them, and providing valuable assistance to Lead Counsel. As part of their oversight of, and participation in, this Action on behalf of the Settlement Class, Plaintiffs, among other things: (i) participated in discussions with Lead Counsel concerning significant developments in the litigation, including case strategy; (ii) reviewed material pleadings and briefs; (iii) in the case of AFME, appeared at the hearing on Defendants' motions to dismiss, (iv) supervised the production of discovery responsive to multiple requests propounded by Defendants, including gathering and reviewing documents in response to discovery requests; (v) prepared and sat for Rule 30(b)(6) depositions in furtherance of Plaintiffs' motion for class certification; and (vi) monitored the protracted settlement negotiations on behalf of the Settlement Class. *See* Kilkelly Decl. at ¶¶5-6; Meynard Decl. at ¶¶5-6.

The Settlement Class Representatives' declarations further establish that the time dedicated to the Action by their employees was time that these salaried employees could not devote to other work for Plaintiffs and thus, resulted in a tangible cost to the institutional Plaintiffs. As Judge Sweet observed in *In re Gilat Satellite Networks*, *Ltd*., "[s]ince the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation, the motion for . . . expenses for Lead Plaintiffs is granted." No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007). Similarly, in *In re American International Group*, *Inc*. *Securities Litigation*, Judge Batts found that "the request of [lead plaintiffs] OPERS and STRS Ohio for reimbursement of $71,910.00 in lost wages related to their active participation in this action is reasonable," No. 04 Civ. 8141 (DAB), 2012 WL 345509, at *6 (S.D.N.Y. Feb. 2, 2012).[16]

The Notice advises recipients that the Litigation Expenses requested by Lead Counsel may include the reasonable costs and expenses of Plaintiffs. To date, there have been no objections to this specific request.[17] Lead Counsel respectfully request that the Court award $13,790.58 to AFME and $6,145.11 to GFPF as compensation for their reasonable costs and expenses incurred in representing the Settlement Class. The reimbursement sought by Plaintiffs is reasonable and fully justified under the PSLRA based on their involvement in the Action and should be granted.

V. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court grant its request for: (i) attorneys' fees in the amount of $12.6 million from the Settlement Fund, plus interest thereon; (ii) reimbursement of $1,381,724.59 in expenses incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of this Action, plus interest thereon; and (iii) reimbursement to the Settlement Class Representatives, in the aggregate amount of $19,935.69, for their reasonable costs and expenses directly related to their representation of the Settlement Class.

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[16] *See also Marsh & McLennan*, 2009 WL 5178546, at *21 (awarding $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class" and noting that these efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives"); *In re Satyam Computer Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip. op. at 3-4 (S.D.N.Y. Sept. 13, 2011), ECF No. 365 (awarding an aggregate amount of $195,111 as reimbursement for the costs and expenses of class representatives directly relating to their services in representing the class).

[17] Mr. Shoeman—who submitted the only objection to date—objects to the requests for reimbursement of litigation expenses generally. *See* n.4 above.

Dated: May 27, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 27th day of May, 2014, I hereby caused a true and correct copy of the foregoing document to be served via Overnight Mail upon:

Mr. Stephen Schoeman
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s/ Eli R. Greenstein
ELI R. GREENSTEIN